

EXHIBIT “A”

EXHIBIT “A”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SARAH H. BLACK, DANIEL L.
BLACK, and JACOB L. BLACK,

Plaintiffs,

-against-

ANTHONY DAIN, CHERIE WRIGLEY,
IRA SALZMAN, MELISSA
COHENSON, BRIAN A. RAPHAN,
P.C., ESAUN G. PINTO, PAMELA
KERR and CPI INVESTIGATIONS

Defendants.

: 16-CV-1238 (CBA)
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: United States Courthouse
: Brooklyn, New York
:
: Monday, December 19, 2016
:

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TRANSCRIPT OF CIVIL CAUSE FOR ORAL ARGUMENT
BEFORE THE HONORABLE CAROL B. AMON
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

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- Proceedings -

3

1 COURTROOM DEPUTY: Black versus Dain, on for oral
2 argument.

3 THE COURT: The parties want to state appearances,
4 please, first for the plaintiff?

5 MR. SCHAALMAN: Michael Schaalman, and share ran
6 Abraham for the plaintiffs.

7 THE COURT: Good afternoon.

8 MS. LANSKY: Samantha Lansky for Pamela Kerr.

9 MR. DAIN: Anthony Dain appearing pro se.

10 MR. BOYAR: David Boyar, D'Amato & Lynch for the
11 defendant Cohenson and Brian Raphan.

12 MR. KATZ: Harris Katz for the defendant Ira
13 Salzman.

14 THE COURT: Afternoon everyone.

15 Let me-- obviously, I have read through all the
16 papers and the tortured history of this case and these
17 estates.

18 Has there ever been any effort made by the parties
19 to have any settlement or mediation in this case since the
20 case was brought here?

21 MR. SCHAALMAN: The answer is, yes, there has been a
22 formal settlement offer made.

23 THE COURT: You all can be seated.

24 The plaintiffs have--

25 MR. SCHAALMAN: Yes, plaintiffs have made a formal

- Proceedings -

4

1 settlement offer and it has been rejected.

2 THE COURT: Have you discussed this with the
3 Magistrate Judge who has this case? Have you had any
4 settlement discussions there?

5 MR. SCHAAALMAN: Your Honor, those settlement
6 requirements, we are going to have a settlement hearing in a
7 conference, those all have been keyed off to this date.

8 The defendants were not anxious as one would
9 understand, to participate in settlement discussions until
10 they knew whether the case was going to move forward or not.
11 That was my understanding and I accepted that.

12 THE COURT: All right.

13 MR. DAIN: Your Honor, Anthony Dain, if I can speak
14 to that.

15 THE COURT: Yes.

16 MR. DAIN: I want to make sure we separate. I
17 believe what Mr. Schaalman is referring to as some kind of
18 settlement in the-- underlining cases.

19 I mean there are probably six cases now dealing with
20 the finding of civil theft, and the surcharges in the Denver
21 Probate Court. No formal settlement demand has been made to
22 me as a defendant in this case, nor at this point, have we
23 been willing to discuss a settlement offer in this case.

24 Because I think everything is--

25 THE COURT: How many cases are pending at the

- Proceedings -

5

1 moment? The Denver probate matter is on appeal; is that
2 right?

3 MR. SCHAALMAN: That's correct.

4 THE COURT: That is where that stands.

5 MR. SCHAALMAN: That is where that stands.

6 THE COURT: The New York Probate case, what is the
7 status of that?

8 My understanding of that is that there was a no
9 guardian appointed for Joanne Black, but the only other action
10 they took was some order precluding contact.

11 MR. SCHAALMAN: Yes, that's correct Your Honor.
12 There was some-- there is a stipulation as I understand it
13 that is in the works in the Surrogate Court. That is another
14 action where that is taking place between the parties.

15 I'm not the attorney involved in that matter, but
16 there is a stipulation to sort of resolve the executor issue
17 in the Surrogate's Court in New York, in Westchester.

18 There is an interpleader action that has been filed
19 by Chase, JP Morgan Chase Securities and JP Morgan Bank and
20 that has had motions, now are pending in that case--

21 THE COURT: Where is that case?

22 MR. SCHAALMAN: In New York as well.

23 THE COURT: Is JP Morgan Chase where the trust
24 assets are?

25 MR. SCHAALMAN: The trust assets are in Illinois, JP

- Proceedings -

6

1 Morgan Chase Securities accounts. Securities accounts.

2 MR. DAIN: I need to speak to that too. The
3 interpleader deals with issue trust assets. That is in New
4 York, I believe called the Supreme Court or-- here in New
5 York.

6 There is a supplemental needs trust which is being
7 administered in San Diego, California, that is not part of the
8 interpleader.

9 The Probate Court case you were talking about Judge
10 Aliotta denied all motions and applications including this non
11 contact motion. Referring the matter to a court that he said
12 of competent jurisdiction, which would be the Surrogate Court
13 in New York, where there are issues relating to the estate of
14 Renata Black pending, and which extend beyond that into the
15 removal of Bernard Black as executor.

16 There are two cases pending here though. This case
17 and then Bernard Black and Samuel Black also brought a
18 separate lawsuit against two of the defendants in this case,
19 Esaun Pinto and Ms. Wrigley. That is still outstanding.

20 In addition the Illinois case in which Mr. Black
21 sued Joanne Black, his disabled sister that is dismissed with
22 prejudice.

23 So, but the global settlement offer apparently made
24 was by the attorney in Illinois, prior to that action being
25 dismissed. Again never conveyed to me, but if it was conveyed

- Proceedings -

7

1 it was conveyed to the other parties.

2 So I have never had any discussions about settlement
3 in this case or any others.

4 THE COURT: Do you represent parties in the second
5 case before this Court?

6 MR. SCHAALMAN: I do, Your Honor. That is case 430,
7 16-CV-430.

8 THE COURT: That is Bernard Black is bringing that
9 case.

10 MR. SCHAALMAN: It is, Your Honor.

11 THE COURT: It just seems like to me that the
12 parties are going to an extraordinary amount of time and
13 effort to spend any money that this-- these trusts may have
14 ever had on litigation. It seems to me it is really not
15 serving anyone well. That is why I wondered if there was some
16 possibility you could put an end to this madness by having
17 some global settlement discussion that would deal with all of
18 these cases.

19 Is that a possibility or not?

20 MR. SCHAALMAN: The plaintiffs would welcome that,
21 Your Honor.

22 THE COURT: What about the defendants?

23 MR. DAIN: The defendants, at least speaking for me
24 as an interested party in Colorado, obviously a defendant
25 here, has to involve the return of all stolen funds. We are

- Proceedings -

8

1 not even close to a discussion on that.

2 Is it possible, absolutely. Would we like it, yes.
3 We have to start somewhere and that is the return of all of
4 the conservatee, the protected person's assets.

5 There is a surcharge, I think Your Honor is aware
6 of, three times the amount of that was stolen. We believe and
7 again this is me personally that Mr. Black is accessing some
8 of the money stolen and not put in a trust to pay for these--
9 for this litigation. We can stop that. Maybe we can have
10 some of that returned. It has to start with that.

11 If that is the starting point then we can have a
12 discussion. If the starting point is we are not returning all
13 of the assets we stole, we really can't do that in fact.

14 MR. SCHAALMAN: Your Honor, you can--

15 THE COURT: Let him finish.

16 MR. SCHAALMAN: Sure.

17 MR. DAIN: I am here pro se as defendant. As a
18 supplemental needs trust where this money should have gone, I
19 have an obligation to Ms. Black who is in court, sitting next
20 to my wife -- if you would wave.

21 And, I have obligations to her that all that money
22 be returned. I can't say I'm going to settle with allowing
23 someone who is found to have stolen assets to keep some of
24 those. And have caused her to spend so much of the rest of
25 her assets.

- Proceedings -

9

1 MR. SCHAALMAN: If I may, Your Honor, Mr. Dain shows
2 the difficulty of even beginning the negotiations. Most don't
3 start with preconditions. People sit down, and try to work
4 out a solution. The plaintiffs are more than willing to do
5 that.

6 We have made a formal offer, previously. I don't
7 know whether it was communicated to Mr. Dain or not. I take
8 his word that he says he didn't know.

9 THE COURT: I am guessing your formal offer does not
10 entail paying money back to the trust that Mr. Dain is talking
11 about.

12 MR. SCHAALMAN: I don't want to intrude into the
13 conversations. But I would just tell the Court that is not
14 correct. And, there were offers made and I think the notion
15 that Mr. Dain is already developing these pre-conditions to
16 make it even impossible to sit down is not the way you do a
17 settlement.

18 THE COURT: But as part of a settlement that you
19 would be discussing would be money being paid-- you represent
20 not in this case, but in the other case, you represent Mr.
21 Black. Would that entail a discussion about monies going back
22 in that are allegedly have been taken by your client?

23 MR. SCHAALMAN: I don't think there are any issues
24 that are off the table Your Honor. I think that the offer by
25 Mr. Black and even the beneficiaries of the issue trust who

- Proceedings -

10

1 are the plaintiffs in this case, I think all issues are on the
2 table and negotiation and a settlement is what it normally is.
3 People come to the table, attempting to resolve the disputes
4 we would not start with any pre-conditions. We don't start as
5 Mr. Dain says, with the assumption that everything that
6 happened in the Colorado Court is accurate or fair. That
7 matter is on appeal.

8 But, we are more than willing to sit down and have
9 tried on a number of occasions to encourage a settlement. It
10 has not been forthcoming.

11 THE COURT: Well, it seems like-- so who did you put
12 your proposal too? Who did you discuss settlement with then
13 if not Mr. Dain? I take it Mr. Dain is-- we are talking about
14 the defendants is the principal defendant in the case. So if
15 you are not talking to him, who are you talking to?

16 MR. SCHAALMAN: I want to be clear, Your Honor, so
17 that the record is straight on this. The offer was not made
18 by me personally, but conveyed either by Mr. Black or through
19 other attorneys, and I believe it was to Mr. Salzman. I think
20 that is indicated in our papers that there was a settlement
21 offer made to Mr. Salzman which we did not believe was even
22 conveyed to Ms. Black, Ms. Joanne Black.

23 MR. DAIN: Your Honor, if that is what he is
24 referring to, that was not in this action.

25 Apparently an offer was made by other counsel to Mr.

- Proceedings -

11

1 Salzman in which the consideration was a portion -- what might
2 be on the table is return of a portion of the interest, issue
3 trust assets. A portion.

4 Understand, their finding by the Colorado Court, a
5 million dollars of assets were laundered into the issue trust.
6 Five hundred thousand in assets were just taken and
7 distributed pro rata, however-- I think it is pro rata is the
8 probate term used as well to each of his seven children.

9 So, again that was not conveyed to me, that was
10 apparently conveyed as a consideration and as I said, that has
11 to be a non starting because we can't start with less than the
12 amounts paid on death assets that were stolen.

13 Again just my obligation is to have those returned,
14 right now they are not alleged. There is a judgement of
15 civil-- it is on appeal, but there is a judgement that goes
16 beyond just mere allegations.

17 So, it was not conveyed to me. Again it was
18 apparently conveyed to Mr. Salzman that that might be the
19 discussion. Very morphous. We were all aware of that. It
20 wasn't here is an offer.

21 It was, let's have a discussion and these are the
22 things we might consider.

23 So I guess you could call that a precondition as
24 well.

25 I understand Your Honor's concern because I'm doing

- Proceedings -

12

1 this and have been doing it throughout the four years not just
2 in pro se, but I'm not being paid. I am having to access
3 funds that the Court in Colorado is authorizing to pay Mr.
4 Salzman to pay Ms. Kerr the forensic accountant, a court
5 appointed--

6 THE COURT: All of this is money coming out of the
7 trust.

8 MR. DAIN: Out of the supplemental needs trust
9 because Mr. Black continues to file litigation and Ms. Black
10 needs to be defended. The Illinois case was solely against
11 her to access the stolen funds. It was doing-- it was saying
12 there was no jurisdiction in any of the Courts but there, let
13 us access the stolen funds so we can continue the litigation.
14 She had to be defended.

15 If there is an offer, you know at any time to return
16 all the stolen money, and then start discussing who is going
17 to pay as the Colorado Court has surcharged Mr. Black for all
18 of the litigation costs he has incurred, we can talk.

19 But I'm sorry to precondition but until we get the
20 return of the stolen assets.

21 THE COURT: What is the amount of monies you claim
22 were stolen?

23 MR. DAIN: Not claim, the amount the Court found.

24 THE COURT: I know what you mean. Go ahead.

25 MR. DAIN: Approximately \$1.5 million.

- Proceedings -

13

1 THE COURT: That went where?

2 MR. DAIN: That went-- it was laundered through the
3 estate, one million approximately into an issue trust, five
4 million never got there. It was given 70 some thousand to
5 each of Mr. Black's seven children, directly.

6 We have no knowledge of where that is, we have no
7 knowledge if he is spending that. Because the Court could
8 only freeze assets she was aware where they were, which was in
9 Chase and that is why Chase was interpleading.

10 The Court trebled-- actually, I can give you an
11 accurate number. Ms. Lansky pointed it out, \$1,511,356.

12 The Court trebled that under Colorado civil threat
13 damages, but there has been approximately \$500,000 in fees
14 that I have had to pay, Ms. Wrigley has paid some of it out of
15 her pocket. I paid some out of my pocket. Other attorneys are
16 waiting to be paid.

17 There are 500,000 and it is rising. I have not
18 gotten the latest bills for attorneys. The attorney in
19 Illinois had to be paid to get the case dismissed that Mr.
20 Black brought. The Court appointed counsel, the guardian ad
21 litem, the forensic accountant, Mr. Salzman. A trust expert
22 had to be paid.

23 So, yes, you are right, Your Honor by the time this
24 is done there maybe another million. That is what we should
25 be discussing, the harm beyond that that Mr. Black has caused

- Proceedings -

14

1 Ms. Black to have to pay out of her remaining assets.

2 I'm with you 100 percent, we need to put an end to
3 this. Hopefully this will be the first start. These motions.

4 But we have to start with the return of the assets
5 I'm sorry we can't start with less than that. It just defies
6 logic that the defendants in the other case-- let me backup.

7 That Mr. Black would want to start with keeping some
8 of the assets.

9 THE COURT: When you say, keep some of the assets.
10 You mean by putting those-- what you said those half million
11 that you claim he distributed. You are arguing, distributed
12 to other people.

13 Are you talking about transferring them from the
14 issue trust to the special needs trust? You said a million
15 dollars.

16 MR. DAIN: The million plus in the issue trust needs
17 to be transferred back. We can resolve Mr. Salzman has issues
18 whether that should have been as-- their mother said, paid on
19 death.

20 So we can resolve between-- I can with other
21 assistance and Mr. Salzman how to get it to Joanne in the best
22 way possible.

23 But that million needs to be transferred back and
24 the five hundred some thousand and that went directly to his
25 children needs to be transferred back. Then the issues that

- Proceedings -

15

1 should be remaining is, does Mr. Black want to run the risk of
2 having that judgment which I believe it will be affirmed on
3 appeal and he has got another three and a half million or-- it
4 will be by then or whether we can just talk about attorney's
5 fees, costs, other kinds over injunctive issues so he won't
6 keep continue suing.

7 I mean I see there are two here one in Illinois,
8 three lawsuits he has brought. And any other issues.

9 But we have to start with the return of the
10 1.5 million, it has to start there. It is doable but it has
11 to start there.

12 MR. SCHAALMAN: The Court asked a pretty straight
13 forward and simple question to which I will repeat my simple
14 answer.

15 The plaintiffs have made an offer of settlement.
16 The plaintiffs stand ready to discuss settlement, go into
17 negotiations as the Court actually has set in the calendar for
18 us to do.

19 THE COURT: The Magistrate Judge has set down a date
20 for--

21 MR. SCHAALMAN: Yes, what happened Your Honor. I
22 know this goes back away.

23 Initially we were here for pre-hearing motions and
24 the Court then established a calendar which has been bumped a
25 number of times.

- Proceedings -

16

1 THE COURT: I'm sorry for that.

2 MR. SCHAALMAN: That is not a problem.

3 But what the Magistrate Judge set a calendar keyed
4 off to this date.

5 THE COURT: Right.

6 MR. SCHAALMAN: So we have a hearing in front of the
7 Magistrate Judge on January 18th, to set a new calendar for at
8 least part of the scheduling order.

9 Part of that includes, a settlement conference and
10 settlement positions.

11 So whether Mr. Dain wants to enter into a
12 negotiation with us or not. He will be required to by this
13 order. He may as his position in the settlement repeat every
14 word he has said here today and that maybe his position.

15 The plaintiffs are willing and will go to this
16 settlement conference with no pre-conditions. They would like
17 to resolve all of this litigation.

18 THE COURT: All right. I think that is a very wise
19 thing to do, on the 18th is to have a formal settlement
20 conference with all parties deciding what their positions are,
21 before you come to that conference.

22 MS. LANSKY: For clarification, I don't believe that
23 conference is settlement. I believe that conference was set
24 down to establish a new schedule based on Your Honor's
25 decision on these motions with the remaining defendants.

- Proceedings -

17

1 Because at this point no risk-- has been exchanged.

2 Everything is awaiting.

3 THE COURT: I want you to have a settlement
4 discussion with the Magistrate Judge on January 18th. I don't
5 care what everybody else calls its. Got it.

6 MR. SCHAALMAN: That is fine.

7 THE COURT: Let me ask a few questions.

8 Mr. Dain, I guess this is principally your motion.

9 MR. DAIN: I guess you could say that. All of the
10 defendants have their own individual basis. I am the primary
11 defendant so.

12 THE COURT: One of the issues I think that you raise
13 and I think others raised as well is collateral estoppel, res
14 judicata.

15 MR. DAIN: One of the issues, actually the others
16 framed it in that sense as res judicata and collateral
17 estoppel. I framed it in probate exception to jurisdiction
18 and the Rooker Feldman doctrine.

19 THE COURT: For Rooker Feldman to apply it has to be
20 the same parties.

21 MR. DAIN: No, I'm sorry, Your Honor, again no it
22 doesn't. It has to be parties--

23 THE COURT: What is your theory if not the same
24 parties?

25 MR. DAIN: I can give you the authority for that.

- Proceedings -

18

1 THE COURT: I mean, why doesn't Lance, the Supreme
2 Court decision indicate that it has to be the same parties.

3 MR. DAIN: What the cases say, is that the parties
4 have to have an identity in interest, essentially they do not
5 have to be the same parties.

6 And, if you look through the complaint, every aspect
7 and I focused on damages, every aspect of damages with damages
8 to Bernard Black in his various--

9 THE COURT: Well, that is a standing issue though.
10 Counsel let me ask plaintiff counsel.

11 You are seeking damages due Bernard Black.

12 MR. SCHAALMAN: No.

13 THE COURT: How do your clients have standing to ask
14 for damages due to Bernard Black.

15 MR. SCHAALMAN: No, we are not. We are the
16 beneficiaries of the issue trust and remainder beneficiaries
17 of the supplemental needs trust.

18 THE COURT: Your multi-- let's see, I think it is up
19 to now 1,513 paragraph complaint, in some of those
20 allegations, you are asking directly for damages due Black,
21 Bernard Black.

22 MR. SCHAALMAN: I think what the Court is referring
23 to, is Mr. Black has incurred litigation expenses.

24 THE COURT: So why-- why did your client ask for
25 those back.

- Proceedings -

19

1 MR. SCHAALMAN: If in fact as we believe the trusts
2 are obligated to repay those expenses that he has incurred, my
3 clients, as the beneficiaries, will be the one, particularly
4 directly in the issue trust, who then have to compensate Mr.
5 Black for those expenses. Those are not the only expenses
6 that they are going to lose as the beneficiaries of the issue
7 trust. But Mr. Black is a trustee of the issue trust.

8 THE COURT: I still don't understand how they have
9 standing to raise claims that he is due monies. You are
10 saying it is because they have to pay him the monies.

11 MR. SCHAALMAN: Because the trust will have to pay
12 Mr. Black, yes. And other litigation expenses have been taken
13 out of the supplemental --

14 THE COURT: But, they want him paid.

15 MR. SCHAALMAN: What?

16 THE COURT: According to your complaint they are the
17 ones who want him paid.

18 MR. SCHAALMAN: I think--

19 THE COURT: How do they have standing to do that? I
20 still don't get what your point is.

21 MR. SCHAALMAN: The way they have standing, they are
22 the beneficiaries who will lose if the issue trust is
23 depleted, either de-funded as Mr. Dain--

24 THE COURT: I understand how they have-- how they
25 may have standing to deal with requests that would damage the

- Proceedings -

20

1 trust itself. But they are seeking to get monies from Mr.
2 Black, personal monies paid to him.

3 MR. SCHAALMAN: No. Mr. Black-- what Mr. Black has
4 obligations from the trust to compensate him for individual
5 expenses incurred in his defending the trust. His protecting
6 the trust, in his trying to keep the trust from--

7 THE COURT: Why is that in their interest to have
8 him paid, that just takes money out of the trust.

9 MR. SCHAALMAN: It is not in their interest. It is
10 because it is an obligation the trust has to him. If in fact
11 the trust fulfills that obligation to Mr. Black, then the
12 beneficiaries are deprived of assets in their trust. In the
13 issue trust.

14 And the only reason Mr. Black has these obligations
15 and had to defend the trust, is because the defendants tried
16 to de-fund the trust. Tried to interfere with the trust.
17 Tried to injure the trust and have been doing that for years
18 now.

19 MR. DAIN: If I can answer your Rooker Feldman
20 question.

21 THE COURT: Yes.

22 MR. DAIN: I cited Board of Managers of 195 Hudson
23 Street Condo versus Jeffery Brown Associates. It is a
24 supplemental case, Southern District of New York, 2009. I
25 will quote from it.

1 It was explained that Rooker Feldman requires that
2 quote, the party defeated in the State Court must share a
3 common identity with the federal plaintiff.

4 I also cited Hoblock versus Albany County Board of
5 Elections 422 F.3d 77 at 89, a Second Circuit case in 2005.
6 Both cases were saying they don't have to be the same--

7 THE COURT: But Lance is after Hoblock. Lance is a
8 subsequent decision.

9 MR. DAIN: Lance was not-- if you look at the facts
10 of that case, was not limiting it to saying it must be the--
11 it must be identical parties. That is why I'm saying, they're
12 proxies for Mr. Black. That is all they did to get around it
13 is say, I will let them sue for my damages.

14 By the way, Your Honor, it would not then be right--
15 going to the standing issue, if what Mr. Schaalman is saying,
16 the trust would have an obligation of Mr. Black and if the
17 trust honors that obligation, then the children may have an
18 action. The trust may or may not honor it and by the way
19 those same fees he is talking about are what the fees before
20 the New York Probate Court or Surrogate Court, and/or the
21 fees, the attorneys fees were before the Denver Court. They
22 are identical. Until the Surrogate Court says Mr. Black can
23 get any fees for all this litigation he started and is
24 incurring, they have to approve those fees.

25 There is no obligation to-- for the trust to pay him

- Proceedings -

22

1 unless his fees are approved. Right now the Probate Court in
2 Denver has said Mr. Black himself personally is obligated for
3 all these fees.

4 THE COURT: So you are-- your principal reliance is
5 on Rooker Feldman.

6 MR. DAIN: Mine is on Rooker Feldman--

7 THE COURT: Or the probate exception.

8 MR. DAIN: The probate exception because every one
9 of the fees, go through the damages and I did in my reply
10 brief. Every item of damage, Mr. Black is-- the plaintiffs
11 I'm sorry, are admitting our damages that the Probate Court
12 has before it, whether it is the Surrogate Court in New York,
13 or the Denver Probate Court. It is before them to approve.

14 The Denver Probate Court has made clear none of
15 those damages, should be paid to Mr. Black, he should be
16 paying for all the costs to all the other parties including
17 Joanne Black.

18 But in his own papers he admits that the executor
19 fee and cost of litigation, in that regard, are fees that the
20 New York Surrogate Court has yet to approve. If you remember
21 in his pleading, he said--

22 THE COURT: It is pending before the New York State.

23 MR. DAIN: He said pending and expects them to be
24 approved.

25 Well, whether his expectation is born out. They are

- Proceedings -

23

1 pending before that Court and for this Court to have a case
2 where it would say, I will award you these damages,
3 plaintiffs, you maybe in conflict with the Surrogate Court who
4 says Mr. Black should not get a dime. In fact, as we believe
5 he ultimately will be removed.

6 THE COURT: But aren't to some extent the damages
7 sought not from the trust but from individuals?

8 MR. DAIN: There--

9 THE COURT: There are some of the damages that are
10 sought, are sought from the individual defendants, not from
11 the trust.

12 MR. DAIN: No, the damages are sought from the
13 individual defendants for fees that Mr. Black has to get
14 approved by a Probate Court.

15 So until this Court can say, I award those damages,
16 the Court has to defer to the Probate Court, Surrogate Court
17 to say they are allowable damages.

18 As you said, it is not in the trust's interest for
19 Mr. Black to be spending monies and having to pay to him, and
20 if the Probate Court, the Surrogate Court says, Mr. Black you
21 are not owed any money, you should not be paid, the trust is
22 not out any money. They should not have to pay Mr. Black.

23 So to that issue, the standing issue is not even
24 ripe. That goes to every single one of the damages claims.
25 There is not one damage claim other than this, you know moral

- Proceedings -

24

1 harm, they claim that this Court could award without first the
2 Probate Court, whether the Surrogate Court or Denver Probate
3 Court agreeing they should be awarded to Mr. Black.

4 MR. SCHAALMAN: Your Honor--

5 THE COURT: I'm sorry. You indicated Mr. Dain you
6 were not relying on res judicata or collateral estoppel for
7 any arguments; is that correct?

8 MR. DAIN: No, I am in the sense I am joining in
9 defendants' arguments, the other ones. I let them raise
10 those--

11 THE COURT: The question that I have about that is,
12 doesn't-- both of those doctrines require final judgment.
13 There is no final judgment here, correct?

14 MR. DAIN: Your Honor, initially that was my
15 understanding, that it would require to go through appeal. I
16 think one of the other counsel has stated under-- as I
17 understand it, New York law, it would not require that. I
18 will allow that counsel to speak to that.

19 THE COURT: Who-- which counsel takes that position?

20 MR. KATZ: Your Honor, in fact, this Court in the
21 case Caldwell versus Gutman, 701 F Supp 2d 340, 2010 opinion,
22 indicated that the Rooker Feldman doctrine should be applied
23 as long as the federal actions, this is in quotes, "as long as
24 federal action seeks review of the previous State Court
25 judgment, regardless of whether that judgment is being

- Proceedings -

25

1 appealed in the State Court when the Federal case begins."

2 THE COURT: That is Rooker Feldman. I was asking --

3 MR. KATZ: You are asking about the Probate
4 exception.

5 THE COURT: I thought that some of the parties have
6 raised res judicata and collateral estoppel. I want a
7 concession, that there is no final judgment and those
8 doctrines don't apply.

9 MR. BOYAR: If I could.

10 THE COURT: Your name.

11 MR. BOYAR: David Boyar for the defendant Cohenson.

12 I believe Colorado State law applies with respect to
13 whether or not collateral estoppel rules are applicable to
14 this case. In effect we are looking to Colorado common law as
15 to whether or not the Colorado rulings are now collateral
16 estoppel as to Bernard Black and these plaintiffs.

17 We cite a case, actually several cases, in my
18 client's brief, that stand for the proposition, that
19 notwithstanding the fact an order or judgment is on appeal,
20 under Colorado law, that determination is collateral estoppel
21 and final, unless and until that determination has been
22 reversed.

23 That is in effect the foundation.

24 THE COURT: That is based on, that is not New York
25 law.

- Proceedings -

26

1 MR. BOYAR: In effect, we argue that Colorado law
2 applies with respect to the collateral estoppel at issue
3 before this Court, not New York law.

4 MR. DAIN: My apologies, Your Honor.

5 MR. WATERSON: Ambrose Waterson, representing the
6 Wrigley and CPI defendants.

7 I will join in that application. We did cite the
8 case in our submission and I will read a quote. It says, but
9 this is-- it says, in addition to Second Circuit says, a lower
10 court judgment quote final for purpose of collateral appeal
11 even while an appeal of that judgment is pending. We cited
12 United States versus International Brotherhood of Teamsters,
13 905 F.2d 610. That is a Second Circuit case, 1990, Your
14 Honor.

15 THE COURT: So you are saying that that-- your
16 position is that that is New York law as well.

17 MR. WATERSON: When Your Honor looks at the case
18 analyzing New York law. But it is a Federal case.

19 We cite-- that is page 11 of our brief.

20 THE COURT: Let me just ask you, counsel with
21 respect to the probate exception, I understand that your
22 argument that based on some of the forms of relief you are
23 seeking, that the probate exception doesn't apply. But there
24 are specific paragraphs in your complaint that it clearly
25 would apply to, where you're asking to declare they don't have

- Proceedings -

27

1 jurisdiction, when you are in a sense asking to have their
2 opinions in essence reversed. Why isn't that clearly the
3 probate exception?

4 MR. SCHAALMAN: It is not, Your Honor, because
5 neither of the issue trust nor the supplemental needs trust
6 was within the jurisdiction of the Probate Court in Colorado.

7 So we are asking--

8 THE COURT: The Probate Court in Colorado thought
9 so.

10 MR. SCHAALMAN: Well, she made a lot of advisory
11 comments and so on. But her case was very narrow. The
12 question in her case was really twofold.

13 Was the disclaimer appropriate as brought by Mr.
14 Black, as conservator. That is what he was. The financial
15 conservator for his sister.

16 That was one issue before her and then, was raised
17 during the trial, not before the trial, by motion, that there
18 would be a-- there was allegation of civil theft and she ruled
19 on it.

20 Those are the only two items that she actually ruled
21 on. That is what the case was about. It was not about
22 probate of the issue relating to the issue trust or to the
23 supplemental needs trust.

24 Mr. Dain has gone back to the Judge, and asked for
25 monies to be taken out of the supplemental needs trust to pay

1 litigation expenses. Another injury to my clients who are
2 beneficiaries, remainder beneficiaries of the supplemental
3 needs trust.

4 So, it is very clear, that -- probate exception
5 would not apply. The trust was not--

6 THE COURT: Why? The probate does not apply what,
7 are you saying she wasn't acting as a probate Judge?

8 MR. SCHAALMAN: She was acting on a very narrow
9 basis as a Judge who was issued an order that Mr. Black could
10 be the conservator and could disclaim the payment on death
11 benefits in the Vanguard accounts. That is what she was
12 doing, not probating the estate. The estate was not in front
13 of her.

14 What was simply in front of her were these two
15 motions that he brought, and the papers that he filed with her
16 including the will, which made it very clear that there was
17 this distribution between two thirds and one thirds, two
18 thirds going to the special-- supplemental needs trust and one
19 third going to the issue trust. And that if you in fact
20 disclaim the payment on death provisions, the will was going
21 to be enforced and those trusts set up by the will, by Renata
22 Black as a desire for the way this estate would be handled,
23 was clearly in front of the Judge.

24 She knew it and it was in the will and she had those
25 documents in front of her.

1 The only things she was deciding then, was the
2 question of whether that disclaimer could be reversed.
3 Because there was a motion made, an action taken to take the
4 disclaimer and reverse it. If the disclaimer had been
5 reversed, then the payment on death for the assets principally
6 in the Vanguard account would have taken hold.

7 But the Judge concluded that she could not reverse
8 the disclaimer and she did not reverse the disclaimer so the
9 trusts remain intact.

10 Mr. Black remained as the trustee of both trusts and
11 my clients remained of course as the beneficiaries of the
12 issue trust. My clients weren't in front of her, could not
13 have been in front of her, would have had no standing to make
14 these allegations in front of her.

15 And their claims are really quite simple. As
16 beneficiaries of the issue trust and remainder beneficiaries
17 of the supplemental needs trust, they are asking that the
18 Court give them their day in Court to protect the issue trust,
19 and to recover those assets which have been taken out of both
20 the supplemental needs trust which have been hundreds of
21 thousands of dollars, and to make sure that the obligations of
22 the trustee which can be exercised against the trust, are not
23 in fact used to take monies out of the issue trust, but rather
24 recouped from the defendants who we believe were involved in a
25 very very serious scheme to breach the fiduciary duties that

1 they had.

2 THE COURT: I'm looking at paragraph 1503. You are
3 asking for declaratory judgment of the Colorado Court has no
4 jurisdiction over the estate of Renata Black. That the
5 Colorado Court orders directing or permitting any actions by
6 or any other person with regard to the estate the issue trust
7 or the SNT or making any other decisions with regard to the
8 estate have no legal effect.

9 That in response to ongoing harm, the Court should
10 permanently enjoin Dain from appearing in Court or otherwise
11 participating in any proceeding involving the Black family
12 trust or estate of Renata Black.

13 MR. SCHAAALMAN: Yes, Your Honor.

14 THE COURT: I mean you are asking this Court to-- I
15 mean it is clearly-- that part of your complaint is clearly
16 subject to the probate exception. You are asking me for
17 declaratory judgment with the Colorado Court has no
18 jurisdiction over the estate of Renata Black. How do you
19 think you can get that relief here?

20 MR. SCHAAALMAN: We get that here because we have a
21 defendant Mr. Dain properly here. And we ask the Court to
22 give us that relief as I think they did in the Lefkowitz case.

23 THE COURT: Why isn't this the complaint. I know
24 that there maybe legal grounds to suggest that the entire
25 complaint cannot be dismissed. But why isn't this complaint

- Proceedings -

31

1 simply your appeal of the Colorado Probate Court decision?

2 MR. SCHAALMAN: It is not, Your Honor, because the
3 parties are very different. The relief is very different. We
4 are not asking this Court for-- for example, we are not asking
5 the Court to be involved in the question of whether the
6 disclaimer was appropriate or not. That is something that was
7 before the Probate Court in Colorado, because it was raised by
8 Mr. Black in his efforts to be the financial conservator. We
9 are not asking the Court to deal with that.

10 We are not asking you to deal with questions of--
11 about the executor of the estate. We are not asking the Court
12 to deal with any of the rest of the estate at all.

13 What we are saying is in this particular paragraph,
14 in 1503, that we need a declaration from this Court that is
15 clear, that says, in fact, that the Colorado Court did not
16 have the jurisdiction to conduct a probate of the estate.

17 The estate and the trust--

18 THE COURT: Which is what you say they did.

19 MR. SCHAALMAN: Well, Your Honor, as I read what
20 Judge Leif wrote, there is a lot of comments and lot of dicta
21 in there.

22 THE COURT: You think this Court has the authority
23 to issue a declaratory judgment telling the Colorado State
24 Court they are all wet, they got it wrong and they shouldn't
25 have done this. That is what I can do here in this case, that

- Proceedings -

32

1 is what you are asking for.

2 MR. SCHAALMAN: No.

3 THE COURT: What does telling the Colorado Court
4 that they have no jurisdiction mean?

5 MR. SCHAALMAN: We are not asking you to go to the
6 merits of the case. We are not asking you to go to the
7 question of whether the disclaimer was appropriate or not or
8 could be revoked. We are not asking you to go into the
9 question of the civil theft that Mr. Black was accused of and
10 a judgement was entered. We are not asking any of that.

11 We want it made clear because we think this Court is
12 fair and impartial to look at the-- what in fact is in front
13 of that court. And to declare what is in front of that Court,
14 that the Court did not have jurisdiction over that-- over the
15 estate or any of the trusts. And the trusts are very very
16 important because the trusts are being invaded by--

17 THE COURT: You don't think that becomes a problem
18 with probate exception.

19 MR. SCHAALMAN: I don't think so, Your Honor.

20 Obviously if the Court does, not all the relief in
21 this complaint needs to be in fact granted by the Court. But
22 I don't think that that language itself, and the request of
23 this Court, is different than in other aiding and abetting
24 cases like the Lefkowitz case, which deals with this whole
25 notion of the probate exception. That is the latest opinion

1 out of the Second Circuit.

2 Which greatly changes the whole notion after the
3 Sullivan case of what that probate exception really means.

4 THE COURT: What do you think the Lefkowitz case
5 stands for?

6 MR. SCHAALMAN: I think the Lefkowitz case stands
7 for the proposition, even if you have intertwined claims, as
8 long as you are not asking the Federal Court to deal with the
9 probate of the estate, to deal with issues in the will, to
10 deal with the res of the estate, the actual corpus of the
11 estate. The claims of aiding and abetting which are the
12 claims the Second Circuit had in front of it in Lefkowitz and
13 are exactly the claims the Second Circuit said shouldn't
14 survive. That is what we are asking this Court for. That is
15 what this action is all about. That is what we want to
16 accomplish here. To move forward on those claims of aiding
17 and abetting against my clients, the beneficiaries of the
18 issue trust. They have no other place to go.

19 THE COURT: You have to amend the Complaint. Have
20 you done that yet?

21 MR. SCHAALMAN: We have done it once.

22 THE COURT: I mean, two of these people are
23 children, correct?

24 MR. SCHAALMAN: Yes, they need a guardian, we will
25 add that.

- Proceedings -

34

1 MR. DAIN: Can I speak directly to that though.

2 This is a fundamental disconnect. The Colorado
3 Probate Court had in rem jurisdiction over the conservatorship
4 estate of Joanne Black.

5 That was the entire assets of Joanne Black on the
6 date she under operation of law, received those monies, that
7 was the date her mother died.

8 So we start with the Colorado Probate Court having
9 in rem jurisdiction over all of those assets and that Court
10 never relinquished that jurisdiction.

11 What plaintiffs concede in their complaint, is that
12 these trusts were funded after Mr. Black engaged in as the
13 Colorado Probate Court found, theft.

14 So he stole the assets from the conservatorship
15 estate, laundered them through the estate of Renata Black into
16 the various trusts, a million and a half dollars of which was
17 never reported to the Colorado Court. Never reported in the
18 accounting.

19 And when it was discovered the Court said that that
20 is a theft. The Court has jurisdiction over those assets and
21 has said so in multiple orders. It doesn't matter whether
22 they were laundered into an issue trust and now Mr. Black is
23 saying, well, my children have rights to this stolen money and
24 you breached your fiduciary duty by not protecting those
25 rights.

- Proceedings -

35

1 They still are the in rem jurisdiction assets of the
2 Colorado court. Everything in this complaint that plaintiffs
3 are asking, is saying, the Colorado Court does not have
4 jurisdiction, can't address--

5 THE COURT: So your position is that the Colorado
6 Court has jurisdiction over both the trusts?

7 MR. DAIN: Absolutely, has jurisdiction over
8 everything. The Colorado Probate Court preferred that the
9 actions initially be brought-- removing Mr. Black in New York,
10 because she said, well, that is where the trusts were created.
11 Mr. Black says, well, I'm in Illinois, so you can't get
12 jurisdiction over me in Illinois. That is why the children are
13 the proxies here, he doesn't want jurisdiction over them here.

14 But, she has said until -- and this is her
15 statement, until another conservatorship or guardianship is in
16 place, I have control.

17 By the way, this was just litigated in a motion that
18 Mr. Black brought to the Colorado Appellate Court to stay her
19 rulings regarding the supplemental needs trust, to freeze on
20 the issue trust and the other 2013 trusts which the plaintiffs
21 called the Black family trusts and the Court of Appeals denied
22 their request to stay. The Colorado Court still has
23 jurisdiction.

24 If Mr. Black disagrees that is what the appeal is
25 for. That is why it is not a matter of amending to state,

1 well, you can go after this but not that.

2 The Colorado Court has jurisdiction over all of Ms.
3 Black's assets. That included everything that was stolen from
4 her from the day one.

5 So, it absolutely applies to everything and it
6 absolutely -- they are asking this Court to overrule the
7 Colorado Probate Court, ask the Appellate Court, to make
8 findings contrary to the Colorado Probate Court, saying, no,
9 he can have access to the issue trust, the trust assets were
10 stolen.

11 And furthermore, saying that he can recover assets,
12 attorney's fees that that Court had said he is obligated to
13 pay, not the defendants.

14 So, everything they are asking for, that is why I
15 focused on damages, it was so easy to see. You can tie that
16 in.

17 But, I don't think this Court can parse and say, you
18 can go after this, you can go after that. Whatever damages
19 they are trying to seek from all of the defendants personally,
20 the Court in Colorado has already ruled, all of those parties
21 acted appropriately and in fact she has ruled that most of
22 them, can get their fees from Mr. Black. Just the other way
23 around.

24 So the probate exception, is absolutely applicable
25 to everything but at worst, I think one of the other defense

- Proceedings -

37

1 counsel raised it. At worst this Court should stay any action
2 until the Colorado Appellate Court rules on this.

3 They have appealed everything. They have appealed
4 my access to the supplemental needs trust, the Court's freeze
5 on the issue trust, even you know again they tried in
6 Illinois, that Court dismissed. They are still seeking that
7 they have appealed everything. Let that Court decide whether
8 the Colorado Probate Court had jurisdiction or not.

9 THE COURT: Was that an alternative request that you
10 made?

11 MR. SCHALMAN: It was not Your Honor. There is no
12 language anywhere in any of the briefs about a stay.

13 MR. KATZ: Your Honor, that is not true. In my
14 motion, I represent Ira Salzman. In our moving memorandum of
15 law, we did request in the alternative that relief. If you
16 bear with me a second, I will find it.

17 MR. WATERSON: Your Honor, the Wrigley and CPI
18 defendants also moved, but specifically saying, we don't think
19 the Court should do that. But, we did raise that as a
20 possibility.

21 THE COURT: That is right, page 27 of your brief,
22 you say it. Absolute minimum. This is the brief from Mr.
23 Salzman.

24 MR. KATZ: Yes.

25 THE COURT: The Court should stay action pending the

- Proceedings -

38

1 outcome of the Colorado appeals.

2 MR. SCHAALMAN: May I address why that would not be
3 a good idea.

4 THE COURT: But you now admit they made the
5 argument.

6 MR. SCHAALMAN: They threw it in as a final salvo,
7 yes, Your Honor. But there was no argument, there was no
8 citation of authority. This was simply a sort of last rope
9 thrown around the dock of the bridge.

10 And, I would like to say that the stay is
11 inappropriate at this point because again--

12 THE COURT: Why?

13 MR. SCHAALMAN: -- my clients.

14 THE COURT: Would not a lot of the issues be
15 resolved by the appeal that you are asking me to get in the
16 middle of.

17 MR. SCHAALMAN: I would not think so, Your Honor.

18 The issues on appeal, the central issues on appeal
19 are whether in fact the conservator, whether Mr. Black as
20 conservator, proper--

21 THE COURT: That is all appealed. Where are the--
22 have you-- Mr. Black appealed. Has anyone submitted his
23 appeal papers? What did he argue on appeal? Do you know?
24 You represent him in another case. What issues did he raise
25 on appeal?

- Proceedings -

39

1 MR. SCHAAALMAN: The principal issues raised on
2 appeal, I don't have the briefs in front of me now, I'm sorry.

3 But principally are the question of whether in fact,
4 the appropriate order was signed by-- motion by him to
5 disclaim the P.O.D, the payment on death.

6 THE COURT: That came out in his favor, the
7 disclaimer. He wanted it disclaimed, correct?

8 MR. SCHAAALMAN: Yes.

9 THE COURT: That was his position and the Court went
10 along with that, right? He is not appealing that.

11 MR. SCHAAALMAN: Well, that is not correct, Your
12 Honor. Because the Court said this he had lacked candor in
13 that-- as the financial conservator, in attempting to get the
14 disclaimer.

15 And clearly is in front of the Court in Colorado,
16 the Court of Appeals, that in fact he exhibited candor. That
17 he attached the will, that there were all kinds of
18 conversations about the fact that this was a two thirds, one
19 third division. I mean even the order in front of Judge Leif,
20 only covered two thirds.

21 THE COURT: Can you provide the Court with a copy of
22 his appeal to the Colorado State Court.

23 MR. SCHAAALMAN: Of course I will do that.

24 But I want to just address for the moment, Mr.
25 Dain's repeated notion of theft and all of the things that

- Proceedings -

40

1 Judge Leif decided.

2 In terms of a real judgment, she did not decide
3 anything other than in fact, Mr. Black as conservator, did not
4 give the Court sufficient candor or information or disclosure,
5 about the disclaimer and that that --

6 THE COURT: Didn't she order he pay certain monies?

7 MR. SCHAALMAN: Yes, that is the second thing on
8 appeal. She found on a motion during the trial, for civil
9 theft, that he in fact would have to pay a million and a
10 half--

11 THE COURT: She found he unlawfully took it.

12 MR. SCHAALMAN: Civil theft is an unlawful taking
13 absolutely.

14 THE COURT: So what is your point. She made those
15 findings.

16 MR. SCHAALMAN: The question is whether she made
17 other findings that were related to the probate. I am trying
18 to let the Court know that, no, she did not take on this-- as
19 a probate matter. She didn't deal with the will. She didn't
20 deal with the estate. She doesn't have jurisdiction over the
21 trust. Didn't even mention in terms of her jurisdiction over
22 the issue trust, didn't have anything to do with the
23 beneficiaries of the issue trust.

24 So the Probate exception is-- again, Lefkowitz, I
25 call it to the Court's attention, had the same issues raised.

- Proceedings -

41

1 And the Second Circuit said, no, when it comes to allegations
2 of breach of fiduciary duty, those were not in front of the
3 Probate Court. They were not in front of Judge Leif,
4 different parties, different allegations. They have a right
5 to have those allegations heard in this Court.

6 MR. DAIN: Your Honor, with respect to appeals. Mr.
7 Black has appealed every order that Judge has made. I cited
8 that in my reply brief.

9 In one of the-- his motions to stay, a January 29th,
10 2016, order, he said execution of the order is not stayed in
11 the assets are transferred, to the Joanne Black conservator.
12 Mr. Black's interest as cotrustee of the trusts, notice,
13 trusts, all three. As well as the interest of the
14 beneficiaries will be irreparably harmed.

15 He has appealed and in the most recent appeal, he
16 cited to the Colorado-- I mean to the Colorado Appellate
17 Court, that it was the supplemental needs trust that was
18 appealing. He suddenly changed from Bernard Black when he was
19 called on the carpet in that, that you don't-- you don't have
20 a right to appeal this issue, involving the trust. He said,
21 no, no, it is the supplemental needs trust that he's appealing
22 and I am doing it on the behalf of that trust.

23 He has raised his interest as a trustee in all three
24 trusts before that Court. The Colorado Court of Appeals'
25 determination will fundamentally resolve every one of these

1 issues.

2 In addition, the Surrogate Court in New York's
3 decision whether Mr. Black is entitled to any payment, or as
4 we believe rather is obligated to pay back hundreds of
5 thousands, will be decided by that Court.

6 Just look at the damages.

7 THE COURT: What is currently pending before the New
8 York Surrogate Court?

9 MR. DAIN: Is pending a final accounting that Mr.
10 Black filed and whether as our-- as the accountant in
11 Colorado--

12 THE COURT: This is on the estates.

13 MR. DAIN: On the estate has found that almost
14 \$200,000 was shorted Ms. Black through this laundering. That
15 is one issue that is going to be decided. Whether he has to
16 pay that back.

17 Two, whether he ultimately will be removed as
18 executor, that is before the Court in a Petition by Mr.
19 Salzman's firm, still before the Court. Whether he will be
20 further surcharged for that.

21 And then there are the interpleader actions pending
22 in New York, I think it is called Supreme Court. In our --
23 California, it is called Superior Court.

24 The interpleader specifically on the interest trust,
25 as to whether the Court should just take control of that and

- Proceedings -

43

1 tell the parties, to reach final determination.

2 All those of, this Court-- should at a minimum I'm
3 not asking you to stay. I believe it should be dismissed as a
4 minimum should stay until all of those are resolved.

5 THE COURT: All right. You didn't request a stay in
6 your papers though.

7 MR. DAIN: I joined, so I did. I joined in all the
8 other.

9 MR. WOTORSON: Your Honor, respectfully, in our
10 papers, it is true, we attempted to join everyone's arguments.
11 In our brief in chief from pages 14--

12 THE COURT: Sorry which brief is this?

13 MR. WOTORSON: This is the brief in support of the
14 motion to dismiss, filed by defendants Wrigley, Pinto and CPI.

15 We have a whole point on this and defendants
16 responded. So pages 14, 15, and 16. This is not relegated to
17 a footnote. This is a whole point.

18 So this argument was absolutely raised.

19 THE COURT: That is abstention, that is different
20 from a stay.

21 MR. WOTORSON: Your Honor in the sense that we
22 argued in our papers, that yes, we thought there-- this Court
23 shouldn't be getting involved in this.

24 THE COURT: That is not getting involved at all.
25 That is different from staying. This is-- Mr. Salzman raised

1 the issue of the stay.

2 Extension argument is different from stay.

3 MR. WOTORSON: Only to the extent we argued that the
4 Court shouldn't exercise any jurisdiction here. That was--

5 THE COURT: That is a much broader request than a
6 stay.

7 MR. DAIN: We all joined Your Honor. I want to be
8 sure on behalf of myself, I joined in this. I joined in Mr.
9 Katz' argument.

10 THE COURT: Okay.

11 MS. LANSKY: We did as well. My client isn't a
12 party in any action, she is a forensic accountant. We have a
13 different position, she shouldn't be in this case in any
14 event.

15 THE COURT: Well, principally you have a question
16 about whether there is even jurisdiction over you.

17 MS. LANSKY: As a starting point. I want to be
18 clear, I am also submitting a separate affirmation in support
19 of all of the points raised by the codefendants.

20 THE COURT: Are you also supporting a stay?

21 MS. LANSKY: I think the case should be dismissed.
22 I think at minimum a stay is required. I don't think the
23 defendant should be forced to sit in limbo in this case while
24 all these appeals in other courts are making decisions. I
25 believe this case should be dismissed, and if any of those

- Proceedings -

45

1 appeals are otherwise successful, then potentially, this Court
2 can consider hearing this case at a later date.

3 Again not particularly against my client, but as a
4 whole, I don't think the defendant should be caused to sit.

5 THE COURT: Does anyone know what the status of the
6 appeal to the Colorado Court is?

7 MR. SCHAALMAN: I'm aware of that. Briefing is
8 almost complete. Not complete yet. It is almost complete.

9 There maybe a cross appeal by some of the defendants
10 and the best intelligence that I have been told is in late--
11 early fall that they think there will be a decision.

12 THE COURT: It hasn't been finished briefing.

13 MR. SCHAALMAN: The briefing is not finished.

14 THE COURT: Oral argument.

15 MR. SCHAALMAN: I do not believe that has been
16 scheduled. I think the Appellate Court in Colorado is a
17 pretty efficient court, moves quickly.

18 MR. DAIN: I'm not sure what other defendant in that
19 case. It is a Probate Court case. Technically, Mr. Black
20 would be the only appellant and Ms. Black is the respondent.

21 So the briefing is not complete. Counsel is
22 correct, I don't think there is any other-- there maybe other
23 orders. There are other orders coming up that Mr. Black may
24 appeal as well that is true.

25 But I do also want to say, I have a jurisdiction

1 argument. You know the only appearances that I understand
2 that plaintiffs arguing is, in the Probate Court case for
3 Joanne Black here, I filed pleadings again as an interested
4 party. I thought-- I think I have an obligation to do. I
5 didn't file any action. Didn't defend personally as a party
6 any action.

7 I don't have any business interest here. I don't
8 have any other interests here other than family. But that is
9 not a connection.

10 And so, I also have a jurisdictional argument that I
11 should not be before the Court.

12 MR. SCHAALMAN: Just I briefly sort of give the
13 Court one way to capsulize the jurisdictional arguments. I
14 realize there are a lot of arguments flowing back and forth
15 and we have not sort of addressed them very systematically.

16 All of these defendants were subject to a temporary
17 restraining order by Justice Aliotta. And all of them were
18 sufficiently in the State of New York, for the Judge, for the
19 Justice to issue this restraining order. That they stay away
20 from the Black family. They no longer contact Northwestern
21 University Law School and no longer attempt to impact their
22 employment at the law school. That restraining order was in
23 effect until a final order issued.

24 THE COURT: Why does the fact one Court concluded
25 that-- you are saying that Court must have concluded it had

- Proceedings -

47

1 jurisdiction over them so I should conclude the same thing.

2 MR. SCHAALMAN: There was no objection that they
3 were there and that activity in that Court, is part of the
4 claims that the beneficiaries are raising, about aiding and
5 abetting, in the fiduciary duties.

6 So the fact-- the fact that they were in front of
7 Justice Aliotta, and that they concluded that they were
8 sufficiently there in New York for him to order them to cease
9 and desist.

10 THE COURT: Was that something that was litigated
11 there?

12 MR. SCHAALMAN: Certainly was.

13 THE COURT: Did anybody raise whether he had
14 jurisdiction to issue the order?

15 MR. SCHAALMAN: The order was provided to the
16 Justice, and he signed it and then there was a final order
17 which came out. No one raised the question of jurisdiction.
18 He didn't raise the question of jurisdiction.

19 THE COURT: Are you arguing that they somehow waived
20 it here?

21 MR. SCHAALMAN: What I am saying is the activity
22 that took place in that Court was part of the scheme to
23 de-fund the trusts.

24 THE COURT: Okay.

25 MR. DAIN: Your Honor, I --

- Proceedings -

48

1 THE COURT: I have to go gentleman and ladies.

2 MR. DAIN: Just a minute to respond to that. There
3 is an inaccuracy, I need to correct that.

4 The Judge was-- they submitted a temporary
5 restraining order. I was not named-- I had no action in that.
6 But they submitted a temporary restraining order. That order
7 was signed, after hearing it was denied. So that needs to be
8 made clear. Judge Aliotta denied that restraining order upon
9 hearing.

10 So the question--

11 THE COURT: Is that correct?

12 MR. SCHAALMAN: No.

13 THE COURT: You guys can't even agree on whether a
14 restraining was signed or not?

15 MR. SCHAALMAN: If I may explain.

16 THE COURT: Honestly.

17 MR. SCHAALMAN: The restraining order was signed and
18 the final order Justice Aliotta said, I'm not continuing the
19 restraining order because the defendants had agreed. They
20 stipulated they would stay away from the Blacks, that they
21 would have no further contact with the Black family. That
22 they would make no attempts in fact to injure the Black
23 family's reputation or employment at Northwestern University
24 Law School. That is why Justice Aliotta signed that and did
25 not continue the temporary restraining order.

- Proceedings -

49

1 So there was a piece left out of what Mr. Dain just
2 said. He specifically said in there, I am not addressing
3 this, I'm not enforcing this further because the parties have
4 agreed that they are not going to do this.

5 MR. DAIN: It was denied. I can submit the order.

6 THE COURT: Was it denied because there was an
7 effective settlement of the issue?

8 MR. DAIN: Judge Aliotta came out and said are you--
9 it wasn't me by the way. Other people had filed a complaint
10 against Northwestern. He said, are you going to contact
11 Northwestern any more. The parties it was addressed to, said,
12 no. He said I will deny it.

13 Everything was denied. That Judge Aliotta denied
14 every application and said send it. Take it up in Surrogate
15 Court.

16 So it was denied.

17 THE COURT: All right. I am reserving decision on
18 this. I want you to all meet with the Magistrate Judge on the
19 date set January 18th and be prepared to discuss resolution of
20 the case.

21 MR. KATZ: If I may one comment, I apologize, I
22 didn't have an opportunity to speak. I want to note there are
23 additional arguments just.

24 THE COURT: I realize that. I have read the papers.

25 MR. WOTORSON: I have one minor point, Your Honor

- Proceedings -

50

1 raised the possibility of an amended complaint. We think an
2 amended complaint would be futile. I also want to emphasize
3 what counsel--

4 THE COURT: Amended complaint with respect to naming
5 the guardians for the children.

6 MR. SCHAALMAN: Exactly.

7 MR. WOTORSON: We don't believe there is a
8 settlement conference for the 18th that is not what is on the
9 docket.

10 THE COURT: I said it is, did you understand what I
11 said. I know you didn't think that the Magistrate Judge
12 ordered that. The Magistrate Judge may well not have ordered
13 it. I ordered it.

14 MR. WOTORSON: I understood that.

15 MS. LANSKY: I have not had any opportunity with all
16 due respect to discuss my client's jurisdictional issues which
17 are separate.

18 THE COURT: I understand it. I have read your
19 papers on that. It is impossible to discuss every single
20 point at this proceeding.

21 MS. LANSKY: My only issue, I am trying to minimize
22 my client fees in this case. And in order to have settlement
23 discussions, I believe the Magistrate Judge's rules require us
24 to submit settlement motions.

25 THE COURT: If you want to issue a settlement

- Proceedings -

51

1 position to say you have don't have any because you have a--
2 not because of a motion pending, you don't believe your client
3 has jurisdiction. I am asking everyone to go to that
4 settlement conference in good faith.

5 MR. SCHAALMAN: Thank you Your Honor.

6 MS. LANSKY: Yes.

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10 I CERTIFY that the foregoing
11 is a correct transcript from
12 the record of proceedings
in the above entitled matter.

13 s/Richard W. Barry

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Richard W. Barry, RPR

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